

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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TITUS HENDERSON,

Plaintiff,

ORDER

v.

Case No. 21-cv-346-jdp

PETER HUIBREGTSE and  
GARY BOUGHTON,

Defendants.

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In an order entered on February 8, 2022, plaintiff Titus Henderson was granted leave to proceed *in forma pauperis* against defendants Peter Huibregtse and Gary Boughton. On February 22, 2022, the Wisconsin Department of Justice filed an Acceptance of Service indicating that it accepts service on behalf of defendant Gary Boughton, but it does accept service on behalf of defendant Peter Huibregtse because he is deceased. The court will construe the Wisconsin Department of Justice's representation as a suggestion of death pursuant to Federal Rule of Civil Procedure 25(a).

As set forth in *Atkins v. City of Chicago*, 547 F.3d 869, 870-74 (7th Cir. 2008), Rule 25 requires the party filing the suggestion of death to both identify the proper party to be substituted *and* serve that individual with the notice. Until proper service is effectuated, the 90-day deadline is not triggered. *Id.* at 874 (“[N]othing will suffice to start the 90-day clock running except service on whoever is identified as the decedent’s representative or successor.”). The Wisconsin Department of Justice may have an opportunity to identify the proper party to be substituted and then to service the notice on that party. Once that occurs, plaintiff will have 90 days to file a motion for substitution.

ORDER

IT IS ORDERED that the Wisconsin Department of Justice may have until **May 12, 2022**, to serve the proper person with notice of death or show cause why they are unable to do so. Once the Department files proof of service, plaintiff will have 90 days to file a motion for substitution.

Entered this April 14th, 2022.

BY THE COURT:

/s/  
PETER OPPENEER  
Magistrate Judge